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12 Attorneys for Plaintiff United States of America

11 **LODGED**

14 OCT 15 2003

IN THE UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

15 CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

16 DEPUTY CLERK

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 SILGAN CONTAINERS CORPORATION,

21 Defendant.
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FILED

DEC - 5 2003

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

BY DEPUTY CLERK

CIV.S-03-2166 LK KMM

Civil No.

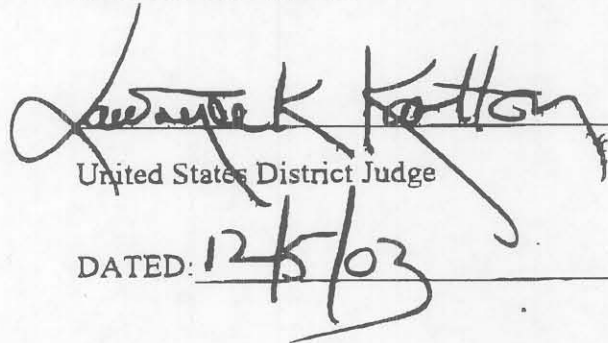
CONSENT DECREE

1 provides for notice of the lodging of this Decree in the Federal Register, opportunity for public
2 comment for at least 30 days, and consideration of any comments prior to entry of the Consent
3 Decree by the Court. The United States reserves its right to withdraw consent to this Consent
4 Decree based on comments received during the public notice period. Defendant consents to
5 entry of this Consent Decree without further notice to the Court.

6 42. Upon entry of this Court, this Consent Decree shall constitute a final judgment for
7 purposes of Fed. R. Civ. P. 54 and 58.

8 **ORDER**


9 IT IS SO ORDERED:

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12 United States District Judge
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14 DATED: 12/5/03
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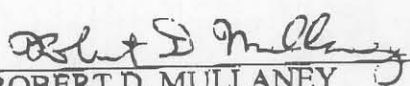
1 For the Plaintiff United States of America:

2 THOMAS L. SANSONETTI
3 Assistant Attorney General
4 Environment & Natural Resources Division
5 U.S. Department of Justice

6 Dated: 9/12/03


7 W. BENJAMIN FISHEROW
8 Deputy Chief
9 Environmental Enforcement Section
10 Environment & Natural Resources Division
11 U.S. Department of Justice

12 Dated: 10-14-03


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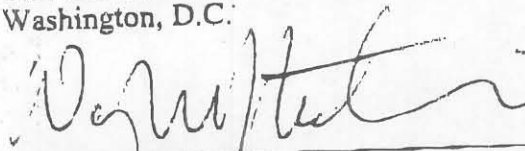
Dated: 10/7/03
JOHN PETER SUAREZAssistant Administrator for Enforcement
U.S. Environmental Protection Agency
Washington, D.C.1
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11 OF COUNSEL:
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Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
Washington, D.C.

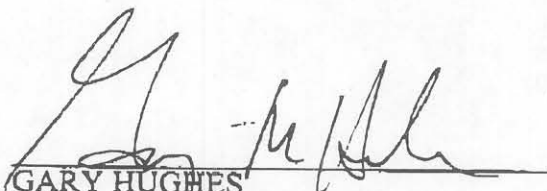


WAYNE NASTRI
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U.S. Environmental Protection
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Agency, Region 9
75 Hawthorne Street
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1 For Defendant Silgan Containers Corp.:
2

3 Dated: 7/10/3


4 GARY HUGHES

5 Executive Vice-President
6 Silgan Containers Corporation
7 21800 Oxnard Street, Suite 600
8 Woodland Hills, CA 91367
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CONSENT DECREE

1 WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United
2 States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a
3 Complaint against Silgan Containers Corporation ("Silgan"), alleging that Silgan has been and is
4 in violation of certain provisions of the Clean Air Act, 42 U.S.C. §§ 7401 - 7671q (the "Act" or
5 "CAA"), and its implementing regulations, at six can manufacturing facilities owned and
6 operated by Silgan and located in California ("Silgan's California Facilities");

7 WHEREAS, Silgan has identified and reported certain potential violations of the CAA at
8 Silgan's California Facilities and agreed to undertake the projects defined herein at those
9 Facilities to reduce air emissions;

10 WHEREAS, the material allegations of the Complaint are deemed denied by Silgan, and
11 this Consent Decree does not constitute an admission of liability by Silgan;

12 WHEREAS, the United States and Silgan (the "Parties") recognize, and the Court by
13 entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in
14 good faith and will avoid prolonged and complicated litigation between the Parties, and that this
15 Consent Decree is fair, reasonable, and in the public interest; and

16 NOW THEREFORE, before the taking of any testimony, without the adjudication or
17 admission of any issue of fact or law except as provided in Section I below, and with the consent
18 of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

19 I. JURISDICTION AND PARTIES BOUND

20 1. This Court has jurisdiction over the subject matter of this action and over the
21 parties pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345,
22 and 1355. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a),
23 and section 113(b) of the Act, 42 U.S.C. § 7413(b). The Complaint states a claim upon which
24 relief may be granted against Silgan pursuant to 42 U.S.C. § 7413(b). Notice of the
25 commencement of this action has been given to the State of California through the San Joaquin
26 Valley Unified Air Pollution Control District ("District") and the California Air Resources Board
27 as required by 42 U.S.C. § 7413(b). Defendant consents to and shall not challenge entry of this
28 Consent Decree or this Court's jurisdiction to enter, enforce, modify, or terminate this Consent

1 Decree.

2 2. This Consent Decree shall apply to and be binding upon Defendant and its
3 successors and assigns, and on the United States on behalf of EPA.

4 3. If Defendant transfers any ownership interest or right to operate any of Silgan's
5 California Facilities, including, but not limited to, the sale, lease, or licensing of others to operate
6 all or part of any of Silgan's California Facilities, Defendant shall give notice of this Consent
7 Decree to any successor in interest prior to such transfer. Defendant shall send a copy of such
8 written notification to EPA postmarked 15 calendar days prior to such transfer. Upon transfer of
9 such Facility, Defendant shall attach a copy of this Consent Decree to the agreement by which
10 such Facility is transferred, and shall make performance of the obligations of Defendant under
11 this Consent Decree an obligation of transferee. Notwithstanding the foregoing, transfer of
12 ownership interest or right to operate any of Silgan's California Facilities will not relieve
13 Defendant from the obligations of this Consent Decree that are applicable to it.

14 II. DEFINITIONS

15 4. Unless otherwise expressly provided herein, terms used in this Consent Decree
16 that are defined in the CAA or in regulations promulgated under the CAA shall have the meaning
17 assigned to them in the CAA or in such regulations. Whenever terms listed below are used in
18 this Consent Decree, the following definitions shall apply:

19 (a) "Silgan's California Facilities." For purposes of this Consent Decree, Silgan's
20 California Facilities are located at: 1815 Navy Drive in Stockton, California ("Stockton
21 Facility"), Marion and Gilroy Streets in Kingsburg, California ("Kingsburg Facility"), 4000
22 Yosemite Boulevard in Yosemite, California ("Modesto (Yosemite) Facility"), 430 Doherty
23 Avenue in Modesto, California ("Modesto (Doherty) Facility"), 567 Riverside Drive in Modesto,
24 California ("Modesto (Riverside) Facility"), and 3250 Patterson Road in Riverbank, California
25 ("Riverbank Facility"). These six facilities are collectively referred to as "Silgan's California
26 Facilities."

27 (b) "Effective Date." The Effective Date of this Consent Decree is the date of entry
28 of the Consent Decree by the Clerk of the United States District Court for the Eastern District of

1 California.

2 (c) "VOC Emissions Log." The VOC Emissions Log are records that contain data
3 defined in Paragraph 13 of this Consent Decree to show compliance with the permit restrictions
4 identified in Paragraph 10 of this Consent Decree.

5 III. CIVIL PENALTY

6 5. After the entry of this Consent Decree, and within 10 days of the receipt of the
7 Electronic Fund Transfer procedures described in Paragraph 6, Silgan shall pay a civil penalty of
8 six hundred fifty nine thousand nine hundred dollars (\$659,900) to the United States.

9 6. Payments under this Consent Decree shall be made by Electronic Fund Transfer
10 ("EFT") to the U.S. Treasury according to current United States EFT procedures. The United
11 States shall provide a copy of current EFT procedures to Defendant pursuant to Section IX
12 (Notification) of this Consent Decree. Concurrently with the electronic funds transfer, Defendant
13 shall fax notice of payment to the person designated as "Point of Contact" on the EFT transfer
14 instructions, and shall send notice of payment to EPA and the United States Department of
15 Justice ("DOJ") at the addresses listed in Section IX (Notification). The notice of payment shall
16 identify: (1) the date and amount of money transferred; (2) the name and address of the
17 transferring bank; (3) this case by name; (4) the civil action number; (5) USAO File
18 # 2003V00419; (6) DOJ # 90-5-2-1-06125; (7) this Consent Decree (including date of entry); and
19 (8) a description of the reason for the payment (including the Paragraph number of this Consent
20 Decree that is most relevant to the payment).

21 IV. COMPLIANCE REQUIREMENTS

22 7. Conversion from Solvent to Water-Based End Sealing Compound

23 (a) Silgan shall comply with the following increments of progress in applying for
24 permits, installing, and operating water-based end sealing compounds on the Riverbank Facility's
25 end line No. 3 (permit number N-2174-14), No. 4 (permit number N-2174-15), No. 9 (permit
26 number N-2174-20), and No. 10 (permit number N-2174-21).

27 (i) Within 30 days after the Effective Date, Silgan shall submit an application for an
28 Authority to Construct ("ATC") to the District for the system conversion to water-based end

1 sealing compounds on the Riverbank Facility's end line No. 3 (permit number N-2174-14), No. 4
2 (permit number N-2174-15), No. 9 (permit number N-2174-20), and No. 10 (permit number N-
3 2174-21). The conversion will include installation of an electric induction compound dryer for
4 each line (with a heat source that will not emit any air pollutants) and will eliminate the use of all
5 volatile organic compounds ("VOCs") at each of the four end lines. In the ATC application,
6 Silgan shall: (1) request that the ATC issued by the District include a permit condition that
7 requires the exclusive use of zero VOC coatings for the four lines; and (2) include the following
8 statements in the application: (i) "Silgan requests the District to expedite this ATC application;
9 Silgan agrees to pay any associated costs with the expedite request, including, but not limited to,
10 District staff overtime;" and (ii) "As required by a Consent Decree with the United States, the
11 conversion to zero VOC coatings on the Riverbank Facility's end line No. 3 (permit number N-
12 2174-14), No. 4 (permit number N-2174-15), No. 9 (permit number N-2174-20), and No. 10
13 (permit number N-2174-21) shall be permanent and shall not be converted back to VOC-based
14 coatings."

15 (ii) Within 180 days after the Effective Date or the District has approved the ATC,
16 whichever is later, Silgan shall install, maintain, and operate the converted water-based system at
17 the Riverbank Facility's end line No. 3 (permit number N-2174-14), No. 4 (permit number N-
18 2174-15), No. 9 (permit number N-2174-20), and No. 10 (permit number N-2174-21).

19 (b) Silgan shall notify EPA pursuant to Section IX (Notification) of this Consent
20 Decree of the start-up date for operation upon which Silgan demonstrates compliance with
21 subparagraph (a)(ii) of this Paragraph. The notification shall be postmarked not more than 30
22 calendar days after such date.

23 8. Capture Efficiency Improvement Project

24 (a) Silgan shall comply with the following increments of progress in applying for
25 permits, and installing, operating, and testing a permanent total enclosure ("PTE") for sheet
26 coater No. 1 (permit number N-764-1) at the Stockton facility. The PTE shall be designed to
27 meet the following requirements: (1) the VOC emissions from sheet coater No. 1 shall be
28 captured by the PTE and controlled by the thermal oxidizer (permit number N-764-1); and (2) the

1 PTE shall be designed and operated to meet the requirements of EPA Method 204, Section 6
2 (Criteria for a Permanent Total Enclosure).

3 (i) Within 30 days after the Effective Date, Silgan shall submit an application for an
4 ATC to the District for the installation of a PTE for Stockton's sheet coater No. 1. Silgan shall
5 request in the ATC application that the ATC issued by the District include the following permit
6 conditions: (1) the PTE shall be designed and operated so that the average facial velocity of air
7 through all natural draft openings in the PTE complies with the requirements of EPA Method
8 204, Section 6; and (2) Silgan shall demonstrate compliance with EPA Method 204 in an annual
9 source test. Silgan shall include the following statements in the ATC application: (i) "Silgan
10 requests the District to expedite this ATC application; Silgan agrees to pay any associated costs
11 with the expedite request, including, but not limited to, District staff overtime;" and (ii) "As
12 required by a Consent Decree with the United States, the conversion to a permanent total
13 enclosure for sheet coater No. 1 (permit number N-764-1) at the Stockton facility shall be
14 permanent."

15 (ii) Within 240 days after the Effective Date or the District has approved the ATC for
16 the PTE, whichever is later, Silgan shall install, maintain, and operate a PTE for sheet coater No.
17 1 at the Stockton facility.

18 (iii) Within 30 days of approval of the ATC for the PTE, Silgan shall submit to the
19 District for approval a test protocol to demonstrate compliance of the average facial velocity of
20 air through all natural draft openings in the PTE as described in EPA Method 204. Copies of
21 Silgan's submission to the District and the approved test protocol shall also be provided to EPA,
22 for notification purposes only, pursuant to Section IX (Notification) of this Consent Decree.

23 (iv) Within 30 days after the District approves the test protocol referred to in
24 subparagraph (a) (iii), or 30 days after start-up of the PTE, whichever date is later, Silgan shall
25 conduct a test to demonstrate compliance of the average facial velocity of air through all natural
26 draft openings in the PTE as described in EPA Method 204 using the approved test protocol.

27 (v) Silgan shall notify EPA pursuant to Section IX (Notification) of this Consent
28 Decree of the date upon which Silgan shall conduct the testing pursuant to subparagraph (a)(iv)

1 of this Paragraph. The notification shall be postmarked at least 15 calendar days prior to such
2 date.

3 (vi) Within 30 days after completion of the testing referred to in subparagraph (a)(iv)
4 of this Paragraph, Silgan shall provide a report describing the testing and its results to the District
5 and to EPA in accordance with Section IX (Notification) of this Consent Decree. This report
6 shall indicate whether the testing demonstrates compliance with subparagraph (a)(iv) of this
7 Paragraph.

8 (vii) After complying with the requirements of subparagraph (a)(iv) of this Paragraph,
9 Silgan shall demonstrate on an annual basis, in accordance with a test protocol approved by the
10 District, compliance with the average facial velocity of air through natural draft openings in the
11 PTE for sheet coater No. 1 as described in EPA Method 204.

12 9. Conversion to Powder Side Seam Stripe Coating

13 (a) Silgan shall comply with the following increments of progress in applying for
14 permits and converting Riverbank's 3-piece can line No. 6 (permit number N-2174-11) to
15 powder side seam stripe coatings.

16 (i) Within 30 days after the Effective Date, Silgan shall submit an application for an
17 ATC to the District to convert Riverbank's 3-piece can line No. 6 to the exclusive use of powder
18 coatings. Silgan shall include the following statements in the ATC application: (i) "Silgan
19 requests the District to expedite this ATC application; Silgan agrees to pay any associated costs
20 with the expedite request, including, but not limited to, District staff overtime;" and (ii) "As
21 required by a Consent Decree with the United States, the exclusive use of powder coatings at
22 Riverbank's 3-piece can line No. 6 shall be permanent."

23 (ii) Within 60 days after the Effective Date or the District has approved the ATC for
24 the coatings conversion, whichever is later, Silgan shall install, maintain, and operate
25 Riverbank's 3-piece can line No. 6 to exclusively utilize powder coatings.

26 (b) Silgan shall notify EPA pursuant to Section IX (Notification) of this Consent
27 Decree of the date upon which Silgan is in compliance with subparagraph (a)(ii) of this
28 Paragraph. The notification shall be postmarked not more than 15 calendar days after such date.

1 10. Permit Restrictions

2 (a) Within 30 days after the Effective Date, Silgan shall comply with the emission
3 limits listed in subparagraph (c) of this Paragraph.

4 (b) Within 30 days of the Effective Date, Silgan shall submit ATC applications to the
5 District to: (1) limit VOC emissions as described in subparagraph (c) of this Paragraph; and
6 (2) add permit conditions for recordkeeping requirements consistent with Paragraph 13 of this
7 Consent Decree.

8 (c) The following emission limits shall apply to the Silgan's Facilities or individual
9 lines:

10 (i) Riverbank Facility 3-piece can line No. 1: VOC emissions shall not exceed 11.0
11 tons per year (12-month rolling basis);

12 (ii) Riverbank Facility 3-piece can line No. 5: VOC emissions shall not exceed 10.0
13 tons per year (12-month rolling basis);

14 (iii) Modesto (Riverside) Facility Plantwide VOC emissions Cap: VOC emissions
15 shall not exceed 25 tons per year (12-month rolling basis);

16 (iv) Modesto (Yosemite) Facility Plantwide VOC emissions Cap: VOC emissions
17 shall not exceed 25 tons per year (12-month rolling basis);

18 (v) Kingsburg Facility Plantwide VOC emissions Cap: VOC emissions shall not
19 exceed 10 tons per year (12-month rolling basis); and

20 (vi) Riverbank Sheet Coater Line No. 4: VOC emissions shall not exceed 20.25 tons
21 per year (12-month rolling basis). In addition, during the first year after the Effective Date, VOC
22 emissions shall not exceed 3.25 tons per month.

23 11. Prohibition on Applying for Emission Reduction Credits ("ERCs")

24 (a) Silgan shall not apply for ERCs based on any reductions of emissions resulting
25 from:

26 (i) the use of water-based end sealing compound at the four lines described in
27 Paragraph 7 of this Consent Decree;

28 (ii) the installation of the PTE and the improved capture efficiency of sheet coater No.

1 described in Paragraph 8 of this Consent Decree; and

(iii) the conversion to exclusive use of powder coatings as described in Paragraph 9 of this Consent Decree.

(b) Within six months after the Effective Date, Silgan shall provide notice to EPA pursuant to Section IX (Notification) certifying that, with respect to any reduction of emissions resulting from Paragraphs 7, 8, and 9 of this Consent Decree, Silgan has not and will not apply for ERCs and has not and will not use such reductions of emissions in any netting calculation. This notice may be incorporated into the quarterly progress report pursuant to Paragraph 12 of this Consent Decree.

(c) The emission reductions associated with the activities described in Paragraphs 7, 8, and 9 of this Consent Decree shall not be treated as actual emission reductions, as calculated by District Rule 2201(4.12), but shall be treated as reductions that are not surplus emission reductions in excess of emission reductions required by law, and therefore, are not eligible for conversion to ERCs.

12. Quarterly Progress Reports: Beginning with the first full calendar quarter after the Effective Date, Silgan shall submit a calendar quarterly progress report to EPA, pursuant to Section IX (Notification) of this Consent Decree, within 30 calendar days after the end of each calendar quarter until the termination of the Consent Decree. The quarterly progress report shall contain the following:

(a) a description of the progress of the implementation (i.e., permitting process, anticipated start-up of operation, testing, etc.) of the requirements of Section IV (Compliance Requirements) of this Consent Decree;

(b) a description of any problems anticipated with respect to meeting the deadlines of the requirements of Section IV (Compliance Requirements) of this Consent Decree; and

(c) a summary of the total annual VOC emissions (on a 12-month rolling basis) for each of the permit restrictions listed in Paragraph 10 of this Consent Decree. Notwithstanding the foregoing, during the first year after the Effective Date of this Consent Decree, Silgan shall report the daily and monthly VOC emissions for each of the permit restrictions listed in

Paragraph 10 of this Consent Decree.

13. Records:

(a) Silgan shall retain all reports, notices, and records required in this Consent Decree for a period of five (5) years or until the Consent Decree is terminated in accordance with Paragraph 40, whichever is earlier, unless required by permit or other law.

(b) Silgan shall maintain a VOC Emissions Log for each permit restriction listed in Paragraph 10 of this Consent Decree.

(i) The VOC Emissions Log for the permit restrictions listed in Paragraphs 10(c)(i) - 10(c)(v) of this Consent Decree shall contain the following information: (1) specific coating used and mix ratio of components added to the coating material prior to application; (2) volume of coating applied (gallons); (3) specific solvents used; (4) volume of each solvent used for cleanup and surface preparation (gallons); (5) daily production rate for each unit type manufactured; and (6) daily VOC emissions.

(ii) The VOC Emissions Log for the permit restriction listed in Paragraph 10(c)(vi) of this Consent Decree shall contain the following information: (1) specific coating used and mix ratio of components added to the coating material prior to application; (2) volume of coating applied (gallons); (3) specific solvents used; (4) volume of each solvent used for cleanup and surface preparation (gallons); and (5) reconciled calculation (i.e., material balance) of the VOC emissions at the end of month.

(iii) The VOC Emissions Log for the permit restrictions listed in Paragraphs 10(c)(iii), 10(c)(iv) and 10(c)(v) shall contain the sum of VOC emissions for all VOC-containing materials (including cleanup solvents) in the facility to yield the plantwide emissions consistent with Paragraph 12(c) of this Consent Decree.

(iv) The VOC Emissions Log for the Riverbank Facility's 3-piece can line No. 1 and No. 5 and sheet coater line No. 4 shall contain the sum of VOC emissions for all VOC-containing materials (including cleanup solvents) for that line to yield the individual line emissions consistent with Paragraph 12(c) of this Consent Decree.

(v) In the event that Silgan, in any given day or month, fails to record data in the VOC

1 Emissions Log or records inaccurate data in the VOC Emissions Log as required in this
2 subparagraph, for purposes of determining compliance with the permit restrictions listed in
3 Paragraph 10, the highest daily or monthly emissions recorded during the 3-month period
4 immediately preceding the day or month for which the date was not recorded will be deemed the
5 daily or monthly emissions for the period. If a record in the VOC Emissions Log for a given day
6 or month occurs within the first 3 months of the Effective Date, then the highest daily or monthly
7 emissions recorded after the Effective Date will deemed the daily or monthly VOC emissions for
8 that day or month. Failure to record data in accordance with this subparagraph shall be subject to
9 stipulated penalties in accordance with Paragraphs 15(a) and 15(b) of this Consent Decree.

10 **V. STIPULATED PENALTIES**

11 14. Late Notice or Reports: If Defendant fails to provide any notice or report
12 required by this Consent Decree by the due date, Defendant shall pay a stipulated penalty of \$500
13 per day for each day that the notice or report is late. If Defendant files any notice or report with
14 incomplete, inaccurate, or missing information, Defendant shall provide EPA with a revised
15 report postmarked within seven calendar working days from receipt of written notification by
16 EPA of the nature of the problem. Defendant shall pay a stipulated penalty of \$750 per day for
17 each day the revised report is late. If Defendant disputes EPA's request for a revised report,
18 Defendant may initiate dispute resolution procedures pursuant to Section VIII (Dispute
19 Resolution).

20 15. Recordkeeping Requirements:

21 (a) Defendant shall pay a stipulated penalty of \$500 per violation for each day that it
22 fails to prepare an entry in a VOC Emission Log as required by Paragraph 13.

23 (b) Defendant shall pay a stipulated penalty of \$10,000 per violation for each month
24 that it fails to prepare an entry in a VOC Emission Log as required by Paragraph 13.

25 (c) Defendant shall pay a stipulated penalty of \$1,000 per violation for failing to keep
26 any given entry in a VOC Emissions Log as required by Paragraph 13 for five years or until the
27 Consent Decree is terminated in accordance with Paragraph 40, whichever is earlier.

28 (d) Defendant shall pay a stipulated penalty of \$1,000 per violation for failing to keep

any report, notice or record as required by Paragraph 13 for five years or until the Consent Decree is terminated in accordance with Paragraph 40, whichever is earlier.

16. Compliance Requirements: Except as may be excused under Section VII (Force Majeure) of this Consent Decree, Defendant shall be liable for stipulated penalties for failure to comply with the requirements of Paragraphs 7 through 11. For each day Defendant fails to comply with the requirements of Paragraphs 7 through 11 other than the recordkeeping and reporting requirements subject to Paragraphs 14 and 15, Defendant shall pay a stipulated penalty for each violation as follows:

<u>Penalty per day</u>	<u>Number of days</u>
\$2,000	first through fifteenth
\$3,000	sixteenth through thirtieth
\$7,000	each day beyond thirtieth

17. Late Payment of Civil Penalty: Defendant shall pay stipulated penalties of \$5,000 per day for failure to timely pay the civil penalty required by Paragraph 5.

18. Right of Entry: Defendant shall pay stipulated penalties of \$5,000 per day for failure to comply with the right of entry granted by Section VI (Right of Entry) of this Consent Decree.

19. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand and due not later than 30 days from EPA's written demand. Stipulated penalties shall be paid in the same manner as set forth in Paragraph 6. The transmittal letter accompanying a payment of stipulated penalties shall refer to this case by name, the civil action number, this Consent Decree (including date of entry), the Paragraph number of the Consent Decree that is most relevant to the payment, DOJ # 90-5-2-1-06125, and USAO # 2003V00419.

20. Payment of stipulated penalties for a violation of this Consent Decree shall not preclude the United States from seeking additional monetary penalties or other relief in Court for the violations that led to stipulated penalties. In addition, the United States reserves its right to pursue directly in the Court any or all relief for any or all violations outside the provisions of this Consent Decree.

VI. RIGHT OF ENTRY

21. EPA and its contractors, consultants, and agents shall have authority to enter Silgan's California Facilities at all reasonable times, upon proper presentation of credentials. This provision in no way limits or otherwise affects any right of entry held by EPA pursuant to applicable federal, state, or local laws, regulations, or permits.

VII. FORCE MAJEURE

22. Defendant shall satisfy the requirements of Paragraphs 7 through 13 except to the extent, and for the period of time, that such performance is prevented or delayed by events which constitute a force majeure.

23. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

24. When an event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree and which Defendant believes is a force majeure, Defendant shall notify by telephone, (415) 947-3988, the Chief, Air Enforcement Office, Air Division of EPA, Region 9, within 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Telephone notification shall be followed by written notification, postmarked within 7 calendar days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude Defendant from asserting any claim of force majeure.

25. If the United States agrees that a force majeure event has occurred, the United

1 States may agree to extend the time for Defendant to perform the affected requirements for the
2 time necessary to complete those obligations. An extension of time to perform the obligations
3 affected by a force majeure event shall not, by itself, extend the time to perform any other
4 obligation. Where the United States agrees to an extension of time, the appropriate modification
5 shall be made pursuant to Paragraph 39 of this Consent Decree.

6 26. If the United States does not agree that a force majeure event has occurred, or
7 does not agree to the extension of time sought by Defendant, the United States' position shall be
8 binding, unless Defendant invokes Dispute Resolution under Section VIII of this Consent
9 Decree.

10 **VIII. DISPUTE RESOLUTION**

11 27. If Defendant disputes any determination made by EPA under this Consent Decree
12 related to: (1) a request by EPA for a revised report under Paragraphs 8(a)(v) and 14, (2) a
13 request by EPA for stipulated penalties, (3) EPA's determination related to force majeure, or
14 (4) the termination of the Consent Decree under Paragraph 40, it shall send a written notice to
15 EPA and DOJ outlining the nature of the dispute and requesting informal negotiations to resolve
16 the dispute. Such period of informal negotiations shall not extend beyond 15 working days from
17 the date when the notice was sent unless the parties agree otherwise.

18 28. If the informal negotiations are unsuccessful, the determination of EPA shall
19 control, unless Defendant files a motion with this Court for dispute resolution. Any such motion
20 must be filed within 30 days after receipt by Defendant of a notice in writing terminating
21 informal negotiations. Defendant's motion requesting judicial resolution of the dispute must be
22 concurrently sent to DOJ and EPA in accordance with Section IX (Notification) of this Consent
23 Decree. The motion shall contain a written statement of Defendant's position on the matter in
24 dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set
25 forth the relief requested and any schedule within which the dispute must be resolved for orderly
26 implementation of the Consent Decree. The motion shall be set for hearing on the motion
27 calendar of the judge to whom this case has been assigned not less than 45 days after the service
28 and filing of the motion.

29. The United States shall respond to Defendant's motion within the time period provided in the Local Rules of this Court, unless the parties stipulate otherwise. Defendant may file a reply memorandum to the extent permitted by the Local Rules or the parties' stipulation, as applicable.

30. In any such dispute resolution proceeding, Defendant bears the burden of proving, by a preponderance of the evidence, that: (i) in disputes regarding EPA's request for a revised report under Paragraphs 8(a)(v) or 14, or stipulated penalties under Section V (Stipulated Penalties), Defendant did not violate the terms and conditions of this Consent Decree; (ii) in disputes regarding Section VII (Force Majeure), each claimed force majeure event is a force majeure event; Defendant gave the notice required by Paragraph 24; the force majeure event caused any delay Defendant claims was attributable to that event; and Defendant exercised best efforts to prevent or minimize any delay caused by the event; and (iii) in disputes regarding termination of the Consent Decree under Paragraph 40, Defendant has satisfied all of its obligations under this Consent Decree.

31. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree not directly in dispute. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V (Stipulated Penalties).

IX. NOTIFICATION

32. Except as otherwise specifically stated, all notices and submissions from Defendant to EPA required by this Consent Decree shall be sent by certified mail, express mail, or similar overnight mail delivery service with return receipt requested and addressed to:

Director, Air Division (AIR-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Attn: Cyntia Steiner, AIR-5

All notices and reports submitted to EPA or DOJ shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. Silgan Containers

1 Corp., the case number, and DOJ# 90-5-2-1-06125.

2 33. All submissions to EPA shall be signed and affirmed by a responsible official of
3 the Defendant using the following certification statement:

4 I certify under penalty of law that I have examined and am familiar with the information
5 submitted in this document and all attachments and that this document and its
6 attachments were prepared either by me personally or under my direction or supervision
7 in a manner designed to ensure that qualified and knowledgeable personnel properly
8 gathered and presented the information contained therein. I further certify, based on my
9 personal knowledge or on my inquiry of those individuals immediately responsible for
obtaining the information, that the information is true, accurate, and complete. I am
aware that there are significant penalties for submitting false information, including the
possibility of fines and imprisonment for knowing and willful submission of a materially
false statement.

10 34. Notice as required by this Consent Decree shall be submitted to:

11 U.S. Department of Justice: Chief, Environmental Enforcement Section
12 U.S. Department of Justice
13 Attn: DOJ# 90-5-2-1-06125 (Mullaney)
301 Howard Street, Suite 1050
San Francisco, CA 94105

14 District: David L. Crow
15 San Joaquin Valley Unified Air Pollution Control District
16 1990 E. Gettysburg Avenue
Fresno, CA 93726-0244

17 Silgan Containers Corp.: Silgan Containers Corp.
18 Attn: Dennis Cornish
Director, Environmental Services
19 21800 Oxnard Street
Suite 600
20 Woodland Hills, CA 91367

21 Charles H. Pomeroy
22 McKenna Long & Aldridge LLP
444 South Flower Street, Suite 800
23 Los Angeles, CA 90071-2901

24 X. MISCELLANEOUS

25 35. Entry of this Consent Decree and compliance with the requirements herein shall
26 be in full settlement and satisfaction of the civil judicial claims of the United States against
27 Defendant as alleged in the Complaint filed in this action. This Consent Decree resolves only
28 those matters specifically alleged in the Complaint filed in this action through the date of lodging

1 of the Decree.

2 36. Except as specifically provided herein, the United States does not waive any rights
3 or remedies available to it for violation by Defendant of federal or state laws or regulations. This
4 Consent Decree shall in no way affect the United States' ability to bring future actions for any
5 matters not specifically alleged in the Complaint filed in this action through the date of lodging
6 of the Consent Decree, and settled by this Decree.

7 37. This Consent Decree in no way affects Defendant's responsibilities to comply
8 with all federal, state, or local laws and regulations.

9 38. Each party shall bear its own costs and attorney's fees in this action.

10 39. This Consent Decree contains the entire agreement between the parties. This
11 Consent Decree may not be enlarged, modified, or altered unless such modifications are made in
12 writing and approved by all parties and the Court.

13 40. This Consent Decree shall terminate according to the procedure provided in this
14 Paragraph. One month after Defendant has both: (i) complied with the requirements of
15 Paragraphs 7 thru 11, and (ii) demonstrated compliance through a compliance test of capture
16 efficiency for Stockton Facility's sheet coater No. 1 specified in Paragraph 8, Defendant shall
17 provide EPA notice, stating that Defendant has satisfied all obligations of the Consent Decree,
18 and believes the Consent Decree can be terminated. Defendant's notice shall refer to this
19 Paragraph 40. Within 60 days after receiving notice from Defendant, EPA will provide
20 Defendant with a written response, either stating EPA's agreement that the Consent Decree is
21 terminated, or stating EPA's determination that the Consent Decree should not be terminated. If
22 EPA fails to provide written response within 60 days after receiving written notice from
23 Defendant or if EPA determines that the Consent Decree should not be terminated, Defendant
24 may initiate dispute resolution procedures pursuant to Section VIII (Dispute Resolution).

25 41. The Court shall retain jurisdiction to resolve any disputes that arise under this
26 Consent Decree, including any disputes pending at the time the Consent Decree is terminated.
27 Defendant agrees and acknowledges that final approval of this Consent Decree by the United
28 States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which

1 provides for notice of the lodging of this Decree in the Federal Register, opportunity for public
2 comment for at least 30 days, and consideration of any comments prior to entry of the Consent
3 Decree by the Court. The United States reserves its right to withdraw consent to this Consent
4 Decree based on comments received during the public notice period. Defendant consents to
5 entry of this Consent Decree without further notice to the Court.

6 42. Upon entry of this Court, this Consent Decree shall constitute a final judgment for
7 purposes of Fed. R. Civ. P. 54 and 58.

8 **ORDER**

9 IT IS SO ORDERED:

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12 United States District Judge

13 DATED: _____
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1 For the Plaintiff United States of America:

2 THOMAS L. SANSONETTI
3 Assistant Attorney General
4 Environment & Natural Resources Division
5 U.S. Department of Justice

6 Dated: _____

7 W. BENJAMIN FISHEROW
8 Deputy Chief
9 Environmental Enforcement Section
10 Environment & Natural Resources Division
11 U.S. Department of Justice

12 Dated: _____

13 ROBERT D. MULLANEY
14 Trial Attorney
15 Environmental Enforcement Section
16 U.S. Department of Justice
17 301 Howard Street, Suite 1050
18 San Francisco, California 94105
19 Telephone: (415) 744-6491

20 McGREGOR W. SCOTT
21 United States Attorney
22 EDMUND F. BRENNAN
23 Assistant United States Attorney
24 Eastern District of California
25 501 I Street, Suite 10-100
26 Sacramento, California 95814
27 Telephone: (916) 554-2700
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Dated: _____

JOHN PETER SUAREZ
Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
Washington, D.C.

Dated: _____

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection
Agency, Region 9
San Francisco, CA

OF COUNSEL:

DANIEL REICH
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 For Defendant Silgan Containers Corp.:
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3 Dated: _____
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GARY HUGHES
Executive Vice-President
Silgan Containers Corporation
21800 Oxnard Street, Suite 600
Woodland Hills, CA 91367